



## UNITED STATES

**Does the country or institution have their own list of designated, banned, or proscribed groups?**

Yes

**What type of system does the country or institution use?**

The United States has two primary counterterrorism sanction authorities:

**Foreign Terrorist Organizations (FTOs):** Section 219 of the Immigration and Nationality Act (INA)<sup>1</sup> authorizes the Secretary of State to designate certain groups that meet the statutory criteria as FTOs.<sup>2</sup> The consequences of an FTO designation include: all funds of the organization under the control of U.S. institutions may be frozen; aliens who are members or representatives of, provide material support to, solicit funds for, or recruit members for the FTO are ineligible for U.S. visas and other immigration-related benefits; and it is illegal for persons subject to the jurisdiction of the United States as defined in the statute to knowingly provide material support or resources to an FTO, and those who provide such support may be subject to significant civil and criminal penalties, including fine or a term of imprisonment.

**Specially Designated Global Terrorists (SDGTs)<sup>3</sup>:** Executive Order (E.O.) 13224<sup>4</sup>, issued pursuant to the International Emergency Economic Powers Act (IEEPA) and other authorities, authorizes the Secretaries of State and the Treasury to designate terrorist actors, terrorist supporters, leaders of terrorist organizations, and those who participate in training to commit acts of terrorism as SDGTs. This results in the blocking of any property, or interests in property, of these persons that are located in the United States or that are controlled by U.S. persons (including legal persons) anywhere in the world. It also prevents U.S. persons or persons located in the United States from having any dealings with the property or property interests of designated persons.

All designated FTOs and SDGTs are added to the U.S. Department of the Treasury – Office of Foreign Asset Control (OFAC)'s Specially Designated Nationals And Blocked Persons List (SDN).<sup>5</sup>

<sup>1</sup> Immigration and Nationality Act (1997)

<sup>2</sup> Foreign Terrorist Organizations, U.S. Department of State

<sup>3</sup> [Specially Designated Nationals And Blocked Persons List \(SDN\)](#), US Department of Treasury.

<sup>4</sup> [Executive Order 13224](#), US Department of the Treasury

<sup>5</sup> Specially Designated Nationals And Blocked Persons List (SDN), U.S. Department of the Treasury.





**What is the definition of “terrorism” the country or institution employs?**

The United States has several definitions of terrorism for specific and generally limited purposes:

For purposes of Chapter 113B (Terrorism) in Title 18 of the U.S. Code:

International terrorism is defined as “activities that— (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; (B) appear to be intended— (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.”<sup>6</sup>

Domestic terrorism is defined as “activities that— (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States.”<sup>7</sup>

For purposes of designating a group as an FTO under INA Section 219, a foreign organization must engage in either “terrorism” or “terrorist activity” as defined in the statute or retain the capability and intent to do so:

Terrorism is defined as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”<sup>8</sup>

Terrorist activities is defined as “any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following: (I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle). (II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained. (III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18) or upon the liberty of such a person. (IV) An assassination. (V) The use of any— (a) biological agent, chemical agent, or nuclear weapon or device, or (b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property. (VI) A threat, attempt, or conspiracy to do any of the foregoing.”<sup>9</sup>

<sup>6</sup> 18 U.S.C. §2331(1)

<sup>7</sup> 18 U.S.C. §2331(5)

<sup>8</sup> 22 U.S.C. §2656f(d)(2)

<sup>9</sup> 18 U.S.C. §1182(a)(3)(B)(iii)





Engaged in terrorist activities is defined as “in an individual capacity or as a member of an organization— (I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity; (II) to prepare or plan a terrorist activity; (III) to gather information on potential targets for terrorist activity; (IV) to solicit funds or other things of value for— (aa) a terrorist activity; (bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or (cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; (V) to solicit any individual— (aa) to engage in conduct otherwise described in this subsection; (bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or (cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or (VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training— (aa) for the commission of a terrorist activity; (bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity; (cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or (dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.”<sup>10</sup>

For purposes of designating an individual or entity (defined in the E.O. to mean partnerships, associations, corporations, or other organizations, groups, or subgroups) as an SDGT under E.O. 13224:

- Terrorism is defined as “activity that— (i) involves a violent act or an act dangerous to human life, property, or infrastructure; and (ii) appears to be intended— (A) to intimidate or coerce a civilian population; (B) to influence the policy of a government by intimidation or coercion; or (C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.”<sup>11</sup>

**How does the designation process relate to the relevant authority’s definition of terrorism?**

Yes, both the INA and E.O. 13224 (including its implementing regulations) set forth legal criteria that must be satisfied before the United States may make a designation, including what activity constitutes terrorism or terrorist activity.

Domestic terrorist organisations – in this case meaning organisations based in the US which engage in the activities above defined as terrorist – cannot be designated under the international terrorism or terrorist activity definitions.

Domestic terrorist groups could in theory be designated based on the domestic terrorism definition, however there is at the time of writing no legal framework to facilitate this.<sup>12</sup> More on this below.

<sup>10</sup> 18 U.S.C. §1182(a)(3)(B)(iv)

<sup>11</sup> E.O. 13224, Section 3(d)

<sup>12</sup> Blazakis, Jason. , USA Today (2021). Lack of a domestic terrorism law creates an imbalance, USA Today (2021) ; Blazakis, Jason. [It’s a real possibility that our next 9/11 could arrive within](#), The Washington Post (2021).





<p><b>Does the country follow UN or EU (if relevant) designation lists and sanctions?</b></p>	<p>Yes, the United States implements its UN obligations relating to sanctions through a variety of U.S. executive orders including E.O. 13224.</p>
<p><b>Does designation have an effect on the online realm? Is content created by terrorist groups illegal?</b></p>	<p>Online content that constitutes material support to an FTO is criminal and is not protected by the First Amendment. A U.S. Supreme Court case ruled that, as applied, the material support statute did not violate the freedom of speech guaranteed by the First Amendment.<sup>13</sup> Material support is defined in U.S. law as any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials. Depending on the facts, online content could potentially implicate other U.S. laws.</p>
<p><b>Is online content that incites acts of terrorism illegal?</b></p>	<p>Other forms of expression not protected by the First Amendment include true threats, incitement to imminent unlawful action, and speech integral to criminal conduct, like solicitation and conspiracy.</p> <p>“True threats” are defined in <i>Virginia vs Black</i> (2003)<sup>14</sup> as “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protect(s) individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur.”<sup>15</sup> This may include online content.</p> <p>Incitement to imminent lawless action was defined in <i>Brandenburg vs Ohio</i> (1969)<sup>16</sup> which said that “the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” Critics have argued that due to online content often being broad and unspecific on timeframes, this makes it difficult to ever determine that online speech is unlawful under this exemption. Critics have therefore argued that the imminent clause should be removed when it comes to criminalising online content.</p>
<p><b>Is online content that supports designated terrorist groups illegal?</b></p>	<p>Sometimes. Knowingly providing material support, as defined by U.S. law, to a designated FTO violates U.S. law. Other online content that could be illegal includes content that constitutes a “true threat,” imminent incitement to violence, or child sexual abuse.</p>

<sup>13</sup> 08-1498 *Holder v. Humanitarian Law Project* (06/21/2010); *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, Congressional Research Service (2019).

<sup>14</sup> *Virginia vs. Black* (2003), Supreme Court Resources.

<sup>15</sup> *True Threats*, Freedom Forum Institute, First Amendment Center (2008).

<sup>16</sup> *Brandenburg vs Ohio*, 1969, Supreme Court Resources.





**Is there a sufficient balance between far-right and violent Islamist groups and individuals?**

The United States has designated one domestic racially or ethnically motivated violent extremist group, which has ties to foreign violent extremists. In 2020, the United States designated the Russian Imperial Movement (RIM) along with several of its leaders as SDGTs under E.O. 13224. Since then, the United States has designated two additional RIM supporters as SDGTs. The United States also designated Anton Thulin as an SDGT. Thulin, who previously received paramilitary training from RIM, was convicted in connection with the detection of a powerful homemade bomb near a Swedish refugee residential center and continued to seek similar training after his release from prison.

Current U.S. law does not allow for the U.S. government to designate purely domestic terrorist organizations. There are no U.S.-based far-right groups currently designated as FTOs or SDGTs.<sup>17</sup>

However, some U.S. entities have been designated as SDGTs in cases where they have provided support to groups designated as SDGTs. One noteworthy case where this occurred was when a U.S.-based charity was designated as an SDGT for providing financial and material support to Hamas, which is designated as both an SDGT and an FTO.<sup>18</sup> Individuals can also be designated as SDGTs based on specific types of activities associated to designated SDGTs. This also applies to U.S. citizens. A notable case is Anwar al-Awlaki who was a dual national (Yemeni and U.S.), who was designated as an SDGT for supporting acts of terrorism and for acting for or on behalf of al-Qaeda in the Arabian Peninsula (AQAP), which is designated as both an SDGT and an FTO.

**Are there human rights-compliant mechanisms in place for delisting a group?**

A designated FTO may file a petition for revocation two years after its designation date or two years after the determination date on its most recent petition for revocation. The Secretary of State may also at any time revoke a designation, and shall revoke upon a finding that the circumstances forming the basis for the designation have changed in such a manner as to warrant revocation, or that the national security of the United States warrants a revocation. A designation may also be revoked by an Act of Congress or set aside by a Court order. Furthermore by law, an organization designated as an FTO may seek judicial review of the designation in the U.S. Court of Appeals for the District of Columbia Circuit not later than 30 days after the designation is published in the Federal Register.

SDGTs may also seek administrative reconsideration of their designation or petition for removal from the SDN List, including based on arguments that there is an insufficient basis for the listing or that the circumstances resulting in the designation no longer apply.<sup>19</sup> An SDGT de-listing request must be made by the blocked person and addressed to OFAC. Upon the U.S. government making a final determination to delist, the U.S. government then takes appropriate administrative actions, including removing the person as an SDGT from the SDN List on the OFAC website, and, if appropriate, working with the UN to remove the person from the UN's Consolidated Sanctions List. Although there is an administrative procedure for seeking de-listing, there is always the possibility to challenge SDGT designations and other OFAC decisions in court.

For individuals, human rights lawyers have criticised the fact that individuals need to be present in the US in order to appeal the designation, meaning that is very difficult for the majority of SDNs to contest their designation.<sup>20</sup>

<sup>17</sup> Blazakis, Jason, Lack of a domestic terrorism law creates an imbalance, USA Today (2021).

<sup>18</sup> Holy Land Foundation case, United States District Court.

<sup>19</sup> 31 CFR 594.201, note 3, and 31 CFR 501.807

<sup>20</sup> Sullivan, G. (2020). The Law of the List: UN Counterterrorism Sanctions and the Politics of Global Security Law. (Global Law Series). Cambridge: Cambridge University Press. doi:10.1017/9781108649322.





<p><b>What are the weaknesses in the designation process?</b></p>	<ul style="list-style-type: none"> <li>• There is no legislation in place to designate purely domestic terrorist groups undermining efforts to counter the far-right, domestic threat.</li> <li>• Some online content produced by a terrorist group, or in support of a terrorist group, may not be considered material support under U.S. law, when balanced against the First Amendment.</li> <li>• Some tech companies have stated that it is difficult to apply the standards of true threats and incitement to imminent violence, such as the level of imminence necessary, to apply to online content. This is particularly the case for smaller tech companies.</li> <li>• Designated individuals and human rights critics also complain that deadlines for appealing a designation decision is very short and de facto may hinder effective appeals.<sup>21</sup></li> <li>• Some of the group names on the FTO and SDGT lists are out of date. Up-to-date terminology is essential to effectively moderate terrorist content produced by these groups in order for tech companies attempting to moderate content produced by groups on U.S. terrorist designation lists.</li> </ul>
<p><b>What do we recommend?</b></p>	<ul style="list-style-type: none"> <li>• The United States could consider enacting legislation that provides the ability to designate domestic terrorist groups and individuals. In our view, enabling the designation of domestic terrorist groups constitutes a mechanism which could help the United States counter its rising violent extremist threat.</li> <li>• Domestic terrorist organisations should be addressed with a comparable seriousness of approach, consistent with U.S. law, as given to international terrorism and as equally severe in order to counter both types of organizations effectively.</li> <li>• The United States should consider putting in place increased human rights safeguards as part of its FTO designation processes, including lengthening the appeal time for groups.</li> <li>• The United States' counterterrorism efforts, particularly online, would be more effective if they were to respond to the changing landscape of terrorist groups and be swifter in responding to terrorist groups' name changes and dissolution.</li> <li>• We recommend the US government to designate individuals that are not directly associated to a designated terrorist group but that are known terrorist offenders. This can help counter the threat and influence of lone-actor terrorists.</li> </ul>
<p><b>Further information and comments</b></p>	

<sup>21</sup> Ibid.

